LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
APR 10 196
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 831

CAMDEN TRUST COMPANY,
Petitioner,

v.

RAY M. GIDNEY, COMPTROLLER OF THE CURRENCY,

and

DELAWARE VALLEY NATIONAL BANK OF DELAWARE TOWNSHIP.

BRIEF FOR THE STATE OF NEW JERSEY, *AMICUS CURIAE*, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

ARTHUR J. SILLS,
Attorney General of New Jersey,
Attorney for Amicus Curiae, State of New Jersey,
State House Annex,
Trenton 25, New Jersey.

DAVID LANDAU,
Deputy Attorney General,
Of Counsel.

TABLE OF CONTENTS

	PAGE
Interest of the State of New Jersey	1
Argument	2
Conclusion	5

Cases Cited

Community National Bank of Pontiac v. Gidney, 192 F. Supp. 514 (D. C. Mich., 1961)	4
Elizabeth Federal Savings & Loan Assn. v. Howell, 24 N. J. 488, 132 A. 2d 779 (1957), 30 N. J. 190, 152 A. 2d 113 (1959)	4fn
Howard Savings Institution, Application of, 32 N. J. 29, 159 A. 2d 113 (1960)	4fn

Statutes Cited

N.J.S.A. 17:9A-19 (New Jersey Banking Act (1948)	2
12 U.S.C. (National Bank Act):	
36(c)	4
36(c)(2)	1-4

Rules Cited

N.J.R.R. 4:88-8	4fn
Rule 42(4)	1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No.

CAMDEN TRUST COMPANY,

Petitioner,

v.

RAY M. GIDNEY, Comptroller of the Currency,

and

DELAWARE VALLEY NATIONAL BANK OF DELAWARE TOWNSHIP.

BRIEF FOR THE STATE OF NEW JERSEY, *AMICUS CURIAE*, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

This brief *amicus curiae* by the State of New Jersey is filed in accordance with Rule 42(4) of the Rules of this Court.

Interest of the State of New Jersey

This case presents the question whether the grant of a national bank charter under the circumstances found in the record does not, in substance and as a matter of law, violate the branch banking provisions of the National Bank Act, 12 U.S.C. 36(c)(2). Such provisions prohibit a national bank from establishing a branch in a municipality

where a state bank would be so prohibited under an applicable state statute—here, Section 19 of the New Jersey Banking Act of 1948, N.J.S.A. 17:9A-19. This case involves an attempt to circumvent the effect of the New Jersey banking statute and the provisions of the National Bank Act. The State of New Jersey, as the state most interested, concurs in petitioner's contention that the application to establish the Delaware Valley National Bank of Delaware Township, intervenor-respondent, should be held to be tantamount to an application for a prohibited branch of the existing Haddonfield National Bank, within the scope and meaning of 12 U.S.C. 36(c)(2) and Section 19 of the New Jersey Banking Act of 1948.

Argument

Section 19 of the New Jersey Banking Act of 1948, N.J.S.A. 17:9A-19, provides, *inter alia*, that a bank may not establish a branch office except in a municipality in which no banking institution has its principal office or a branch office. Under 12 U.S.C. 36(c)(2), Congress requires that state law governing the establishment of branch banks must be followed in establishing national bank branches. Thus, because petitioner has operated a branch office in Delaware Township, New Jersey since 1953, a national or another state bank not having its principal office in Delaware Township could not and cannot open a branch office there.

In an effort to establish a banking facility in Delaware Township, Haddonfield National Bank, having its principal office in Haddonfield, New Jersey, sought unsuccessfully to obtain the Comptroller's approval for it to move its main office into Delaware Township and retain its Haddonfield office as a branch. Shortly after the rejection of the aforesaid plan, the directors of Haddonfield National

Bank, admitting that an outright branch office of Haddonfield National could not be established in Delaware Township, openly joined as individuals in an application for grant of a new national bank charter for intervenor-respondent, to be located in Delaware Township at the same location to which Haddonfield National would have moved its main office, and to be an affiliate of Haddonfield National and operated under the same management and policies. The shareholders of Haddonfield National were invited to subscribe for shares in the new bank. It is obvious that, regardless of form, the substantive character of the foregoing application is an application for the establishment of a branch in a municipality where a branch is not permitted under New Jersey law.

The decisions of the District Court and the Court of Appeals would affirm the Comptroller's approval of intervenor-respondent's application, and thereby sanction the device employed. However, if the Comptroller's power to grant new banking charters can be utilized to create a facility affiliated with, and operated under the same policies and management as a national bank, without regard to the branch office restrictions of 12 U.S.C. 36(c)(2), grave damage will be done to existing competitive balances in the nation's dual banking system, and to federal-state relationship in this area. The door will be open for all national banks to evade state branching restrictions by the device of establishing an affiliate.

In a dual banking system, it has long been recognized that, while competition between banking institutions is desirable, subject to conformity with prudent practices and regulatory controls, unequal competition between the state and national banks with respect to the size and number of banking offices can result only in jeopardizing the financial security of the public at large. Therefore, although the National Bank Act is basically a *unit* banking statute, a limited branch office exception to this unit bank rule

was created by Congress in 1933 for the purpose of affording unit national banks competitive equality with those state banks which are specifically permitted by state statute to establish branches.

The creation of a new national bank in the circumstances here present perverts the intent and purpose of Congress. If the courts cannot or will not require the Comptroller to examine the motivation and facts surrounding an application for a charter of an affiliate of a national bank, in order to determine whether the new bank will be in law and practical effect a branch prohibited under 12 U.S.C. 36(c)(2), the result will be to emasculate a key statutory protection, as well as destroying true equality between the state and federal banking systems. Certainly no geographical restrictions on location of national bank branches will thereafter be meaningful and national banks will be able to do indirectly what they could not do directly.

Too, this weakening of the statutory policy, directive and control otherwise imposed by Congress upon the powers of the Comptroller by virtue of 12 U.S.C. 36(c) is cause for concern when considered against the background of the Comptroller's asserted immunity to judicial challenge on grounds other than illegality. (See, *Community National Bank of Pontiac v. Gidney*, 192 F. Supp. 514 (D. C. Mich., 1961).)

Apart from the sharp contrast of New Jersey practice in this respect,* which further accentuates for State banks

---

* Every decision of the New Jersey Commission of Banking and Insurance granting branch or new charter applications is reviewable on appeal taken by an interested party, with broad standing afforded because of the public interest involved. N.J. R.R. 4:88-8; *Elizabeth Federal Savings & Loan Assn. v. Howell*, 24 N. J. 488, 132 A. 2d 779 (1957) and 30 N. J. 190, 152 A. 2d 113 (1959). This right is frequently exercised by competing national banks. See *e.g., Application of Hazard Savings Institution*, 32 N. J. 29, 159 A. 2d 113 (1960).

the competitive inequality previously mentioned, we point out that the decisions below threaten to replace a plain statutory policy and mandate with the unfettered and unreviewable discretion of the Comptroller. Whether viewed by lawyer or banker, this is a poor exchange.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

April 9, 1962.

ARTHUR J. SILLS,
Attorney General of New Jersey,
Attorney for Amicus Curiae,
State of New Jersey.

DAVID LANDAU,
Deputy Attorney General,
Of Counsel.